

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHANNEL AWEAU, individually,
and on behalf of all others similarly situated,

Plaintiff,

v.

COMCAST CABLE
COMMUNICATIONS, LLC,

Defendant.

No. 2:21-cv-5675

**UNITED STATES OF AMERICA'S ACKNOWLEDGMENT OF CONSTITUTIONAL
CHALLENGE**

On March 9, 2022, Defendant Comcast Cable Communications, LLC, filed a notice of its constitutional challenge to 47 U.S.C. § 227(b)(1)(A)(iii) and to Federal Communications Commission rules and regulations promulgated under that section. *See* ECF No. 16. Although the United States may intervene in any action challenging the constitutionality of an act of Congress, *see* 28 U.S.C. § 2403(a), here the constitutional challenges have only been raised in Comcast's Answer, *see* ECF No. 15 at ¶¶ 25–27. The United States is unaware of any motion or other filing supporting Comcast's constitutional challenge or seeking a Court ruling striking down the challenged provisions. Moreover, given that the case remains in its early stages, it may be resolved without the Court having to decide Comcast's constitutional challenges. So the United States believes that intervention would be premature at this time. *See Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981) (“[P]rior to reaching any constitutional question, federal courts must consider nonconstitutional grounds for decision.”).

The Solicitor General must approve intervention by the United States, 28 C.F.R. § 0.21, and obtaining that approval generally takes several weeks. So if Comcast seeks a Court ruling on the constitutionality of § 227(b)(1)(A)(iii) and related FCC rules in a dispositive motion or other filing, the United States respectfully requests that, under 28 U.S.C. § 2403(a) and Federal Rule of Civil Procedure 5.1, the Court notify the United States of that challenge and permit the United States to intervene within sixty days of that notice.

Dated: April 7, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

ERIC R. WOMACK
Assistant Director

/s/ Kevin Wynosky
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Counsel for the United States

CERTIFICATE OF SERVICE

On April 7, 2022, I electronically submitted this document to the clerk of court of the U.S. District Court for the Eastern District of Pennsylvania using the court's electronic case filing system. I certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin Wynosky
Kevin Wynosky
Trial Attorney
U.S. Department of Justice